IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4426 OF 2006

Mohanlal Ghanshamdas Kukreja ..Petitioner

V/s.

Hiralal Ghanshamdas Kukreja & ors ..Respondents

Mr.P.N.Gajwani i/b.M/s.A.V.Jain Associates for the petitioner
Mr.Makhija i/b.Mahesh R. Patil for the respondent Nos.1 to 4

CORAM : A.S.OKA, J.

DATE : 10TH APRIL,2007

P.C.

1. Heard learned counsel appearing for the parties. By this Writ Petition under article 227 of the Constitution of India, the petitioner-the original defendant has taken exception to the order dated 17th March, 2006 passed by the learned Civil Trial Judge in Contempt Notice of Motion No.4622 of 2001. By the said Judgment and Order, the Notice of Motion stands dismissed. The relevant prayers made in the Notice of Motion are (a) to (c) and (e) which read thus :-

(a) That pending the hearing and final disposal of the suit the Plaintiffs be held Contempnors for making false statement on oath in the para 3 of the Plaint to the extent that the Plaintiffs are in exclusive possession of the suit property.

(b) That this Hon'ble Court may be pleased to dismiss the suit due to the issues involved in this suit being similar to some of the issues in the High Court Suit No.1143 of 1986 which have been decided by Order dated 10th September, 2001 by the Hon'ble High Court at Bombay;

(c) That this Hon'ble Court be pleased to issue Notice of Perjury under the provisions of Section 195 of the I.P.C. And the Plaintiffs be held Contempnors under Section 39 of Contempt.

(e) That the Plaintiffs be held guilty for committing Contempt of this Hon'ble Court and they be directed to under go 6 months Civil imprisonment, be they further directed to pay fine for an amount to be decided by this Hon'ble Court.

2. The Notice of Motion was taken up for hearing after the main suit was disposed of. The learned counsel appearing for the petitioner therefore, submits that prayer clause (a) could not have been granted as the said prayer is for a grant of a relief pending the hearing and final disposal of the suit. The prayer Clause (b) praying for the dismissal of the suit had become infructuous. He states that so far as rejection of prayer clause

(c) is concerned, the petitioner is not pressing this Writ Petition with liberty to adopt an appropriate remedy for challenging the order.

3. I have considered the submissions. It is obvious that prayer clauses (a) & (b) could not have been granted on the date on which the Notice of Motion has been dismissed. So far as prayer clause (c) is concerned, the request made by the counsel for the petitioner deserves to be accepted. So far as prayer clause (e) is concerned, it must be stated that there is no power vesting in the City Civil Court to punish a person for committing either a Civil or a Criminal contempt under the Contempt of Courts Act, 1971. Therefore, the said prayer could not have been granted by the trial Court.

4. Hence, there is no merit in prayer clauses (a), (b) and (e) of the Notice of Motion taken out by the petitioner. So far as prayer clause (c) of the Notice of Motion is concerned, though this Writ Petition is rejected, liberty is reserved to the

petitioner to adopt appropriate remedy for challenging the rejection of prayer Clause (c).

5. Hence, Writ Petition is rejected. Notwithstanding rejection of the Writ Petition it will be open for the petitioner to adopt appropriate remedy in so far as rejection of prayer clause (c) is concerned.

(**A.S.OKA, J.**)